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Counsel for Defendants

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19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF NEVADA**

21 TOBIE RAYCHELLE WHIPPLE and KURT
CHRISTENSEN,

22
23 Plaintiffs,

24 v.

25 C. R. BARD, INCORPORATED and BARD
PERIPHERAL VASCULAR, INCORPORATED,

26
27 Defendants.
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CASE NO. 2:19-cv-01883-RFB-BNW

**STIPULATION TO EXTEND
DISCOVERY AND PRE-TRIAL
DEADLINES**

(SEVENTH REQUEST)

1 Come now, Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (“Bard” or
 2 “Defendants”) and Plaintiffs Tobie Raychelle Whipple (“Whipple”) and Kurt Christensen
 3 (“Christensen”) (collectively, Whipple and Christensen are referred to as “Plaintiffs”), by and
 4 through their undersigned counsel of record, pursuant to LR IA 6-2, and hereby stipulate that the
 5 discovery deadlines are extended by sixty (60) days as detailed below. This stipulation is entered
 6 into as a result of the following circumstances:

7 The parties have worked diligently to pursue all necessary discovery including *inter alia*:
 8 preparation and service of plaintiff and defense fact sheets, accompanying documents, and
 9 supplements thereto; the depositions of Ms. Whipple, Mr. Christensen, a Bard sales representative
 10 (Ms. Cerissa Ferguson), and several of Plaintiff’s numerous medical providers; and the collection
 11 and production of a significant volume of medical records (Ms. Whipple has an extensive and
 12 complicated medical history). Despite the parties’ best efforts, all necessary discovery has not yet
 13 been completed.

14 Obtaining medical records from and scheduling the deposition of one of Ms. Whipple’s
 15 current and primary treating physicians, Dr. Dan Peterson of Sierra Internal Medicine, was
 16 significantly delayed due to his being in a significant motor vehicle crash resulting in multiple injuries
 17 including a severe concussion. As a result, Dr. Peterson missed at least one month of work which in
 18 turn delayed testing and interpretation of results on the Plaintiff Tobie Whipple. Additionally, Dr.
 19 Peterson had entered quarantine protocols due to COVID-19. Dr. Peterson's testing, interpretation,
 20 diagnosis and treatment are critical in this matter, and he has arranged for Ms. Whipple to be seen by
 21 specialist in a different field. Additionally, although he was scheduled to be deposed on January 28,
 22 2022, that deposition is being postponed until after the parties’ expert disclosures are served given
 23 that Dr. Peterson has been identified as a physician Plaintiffs intend to disclose as an expert witness.

24 Bard has actively worked to schedule – and in fact scheduled and begun taking - the
 25 depositions of several other medical providers. Bard will likely need to depose the specialist to whom
 26 Dr. Peterson has referred Ms. Whipple for additional evaluation.

27 Additionally, via written discovery Bard has sought copies of documents relating to Ms.
 28 Whipple’s various disability claims (workers’ compensation, private disability and Social Security

Administration), and Plaintiffs have produced a number of responsive documents. However, the production appears to be incomplete (through no fault of Plaintiffs). The parties are working together to complete the receipt and production of those key documents relating to Ms. Whipple's prior and current medical conditions and their impact on her physical abilities.

Finally, Plaintiffs' counsel who has been involved in the IVC filter litigation against Bard at a national level for years, Ramon Lopez, Esq., has been recently undergoing significant and physically-taxing medical treatment. As a result, his schedule has been impacted.

In light of the foregoing, the parties respectfully submit that good cause exists for this extension. The parties must complete fact discovery, which has been hampered as noted above, in order for their expert witnesses to appropriately complete their analyses and reports. The parties have been diligent in conducting discovery to date. Additionally, the extension will allow the parties to explore settlement discussions.

Pursuant to Federal Rules of Civil Procedure 6(b) and 26, and the Court's inherent authority and discretion to manage its own docket, this Court has the authority to grant the requested extension. Fed. R. Civ. P. 6(b) ("When an act may or must be done within a specified time the court may, for good cause, extend the time..."); Fed. R. Civ. P. 26(a) ("A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending...The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."). Furthermore, Federal Rules of Civil Procedure 26(c) and 26(d) vest the Court with authority to limit the scope of discovery or control its sequence. *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) ("Rule 26 vests the trial judge with broad discretion to tailor discovery narrowly and to dictate the sequence of discovery.").

This Court has broad discretion to extend deadlines or stay proceedings as incidental to its power to control its own docket – particularly where, as here, such action would promote judicial economy and efficiency. *Bacon v. Reyes*, 2013 U.S. Dist. LEXIS 143300, at *4 (D. Nev. Oct. 3, 2013) (citing, *Munoz-Santana v. U.S. I.N.S.*, 742 F.2d 561, 562 (9th Cir. 1984)) "Whether to grant a stay is within the discretion of the court"; *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005) ("A district court has discretionary power to stay proceedings in its own court."); *Landis v. N. Am.*

Co., 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”).

The parties respectfully stipulate and request that this Court modify the Stipulated Discovery Plan and Scheduling Order., Dkt. 56, as follows (modifications shown in bold):

PROPOSED DATE	DEADLINE
January 17, 2020	Parties shall exchange Rule 26(a) Initial Disclosures. Plaintiff shall include a list of medical providers for the period of time from ten years before placement of the Bard filter to the present. Defendants shall produce standard medical and other records release authorizations to be completed and signed by Plaintiffs.
April 16, 2020	Last day to Amend Pleadings and/or Add Parties.
May 14, 2020	Plaintiff shall produce the completed Plaintiff Fact Sheet and related information utilized in the <i>In re: C. R. Bard, Inc. IVC Filter MDL</i> , attached as Exhibit A. Plaintiff shall produce the completed and signed standard medical and other records release authorizations covering the period of time from ten years before placement of the Bard filter to the present.
June 11, 2020	Defendants shall produce the completed Defendant’s Fact Sheet and related information utilized in the <i>In re: C. R. Bard, Inc. IVC Filter MDL</i> , attached as Exhibit B.
April 29, 2022	Non-Expert Discovery in this action shall be completed.
June 25, 2022	Last day for disclosing Expert reports.
August 26, 2022	Last day for disclosing Rebuttal Expert reports.
October 21, 2022	Expert Discovery in this action shall be completed
December 23, 2022	Deadline to file Daubert motions and other dispositive motions.

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IT IS SO STIPULATED.

DATED this 7th day of February 2022.

**BRADLEY, DRENDEL & JEANNEY,
LTD**

By: /s/ Bill Bradley, Jr.

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Counsel for Defendants

ORDER

Good cause shown, IT IS ORDERED that ECF No. 63 is GRANTED.

IT IS FURTHER ORDERED that the parties are to provide a joint status report by 2/28/2022 indicating: (1) when the needed documents to properly depose Dr. Peterson are expected to be received, and (2) when the remaining discovery regarding Ms. Whipple's disability claims will be turned over to the Defense.

IT IS FURTHER ORDERED that the hearing regarding ECF No. 63 set for 2/22/2022 is VACATED.

IT IS SO ORDERED

DATED: 12:56 pm, February 16, 2022



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on **February 7, 2022**, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive such service.

/s/ Shermielynn Irasga

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